

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMAZON CAPITAL SERVICES, INC.,

Plaintiff,

- against -

BENZION LEBOWITZ,

Defendant.

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Case No.

COMPLAINT

Amazon Capital Services, Inc. (“Amazon Capital Services”) by and through their attorneys, Davis Wright Tremaine LLP, brings this Complaint against Defendant Benzion Lebowitz (“Mr. Lebowitz”), and alleges as follows:

INTRODUCTION

1. Amazon.com, Inc. (“Amazon”) offers both its own inventory of products directly to consumers and also provides a platform for third parties to sell products through the Amazon.com website. By opening its online store to third-party sellers, Amazon has increased the selection and availability of countless products, giving Amazon customers a seamless and complete one-stop online shopping experience. The expanded marketplace also allows small businesses to utilize Amazon’s site, brand, and presence to reach hundreds of millions of customers, creating a unique opportunity for these sellers to grow their customer base and sales.

2. Defendant Mr. Lebowitz is the owner of one such business, Better Linen & Bath, Inc. (“Better Linen”), a third-party seller on Amazon.com whose products included kitchen, bathroom, and other household products. Since 2012, Better Linen generated more than \$24 million in gross sales. In the 2018 calendar year alone, Better Linen generated sales of more than \$3 million using the Amazon platform.

3. Amazon is committed to supporting its third-party sellers in many different ways. Relevant here, Amazon Capital Services—an affiliate of Amazon—offers competitive, low-cost business loans to certain sellers to support their selling businesses on Amazon. Because Amazon has an existing relationship with these sellers, Amazon Capital Services is able to simplify the loan origination process, reduce the necessary documentation, and originate loans more quickly and efficiently than traditional small-business lenders.

4. On July 26, 2018, Better Linen, through Mr. Lebowitz, applied for a \$296,369.00 loan from Amazon Capital Services (the “Loan”). In order to obtain the Loan, Mr. Lebowitz agreed to two separate binding contracts: (1) a loan agreement, dated July 26, 2018, which set forth the terms of the Loan between Amazon Capital Services and Better Linen (the “Loan Agreement”), and (2) a personal guaranty, also dated July 26, 2018, pursuant to which Mr. Lebowitz “unconditionally and irrevocably” personally guaranteed Better Linen’s obligations under the Loan Agreement (the “Personal Guaranty”).

5. On March 1, 2019, Better Linen defaulted on its loan payments. Mr. Lebowitz subsequently breached the Personal Guaranty by failing to fulfill Better Linen’s responsibilities under the Loan Agreement. Amazon Capital Services reached out to Mr. Lebowitz multiple times in an unsuccessful effort to resolve this dispute without the need for litigation.

6. Amazon Capital Services now files this Complaint against Mr. Lebowitz, asserting a claim for breach of contract due to his breach of the Personal Guaranty. Pursuant to the unambiguous terms of both the Loan Agreement and the Personal Guaranty, Amazon Capital Services seeks a judgment in the amount of the outstanding Loan balance, with interest, as well as the awarding of the reasonable attorney’s fees necessitated by the filing and prosecution of this lawsuit.

THE PARTIES

7. Amazon Capital Services is a Delaware corporation with a principal place of business located at 410 Terry Ave N, Seattle, Washington 98109.

8. Mr. Lebowitz is an individual who, on information and belief, owns and controls the activities of Better Linen. Mr. Lebowitz resides at 21 Dinev Road, Unit 301, Monroe, New York 10950.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

10. This Court has personal jurisdiction over Defendant by virtue of his residence and the wrongful conduct in which he engaged in the State of New York, which caused harm to Amazon in the state.

11. Venue is proper in this District under 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS

12. Better Linen has sold products utilizing the Amazon platform since 2009. Since 2012, Better Linen generated more than \$24 million in gross sales made on Amazon. In the 2018 calendar year alone, Better Linen generated sales of more than \$3 million using the Amazon platform.

13. Upon information and belief, Mr. Lebowitz is the sole principal of Better Linen.

14. On July 26, 2018, Better Linen, through Mr. Lebowitz, applied for the Loan from Amazon Capital Services. In exchange for the Loan in the amount of \$296,369.00, Mr. Lebowitz agreed to the Loan Agreement, which included, among other things, a 12-month

repayment term and a 15.99% interest rate. A true and correct copy of the application completed by Mr. Lebowitz, with the executed Loan Agreement, is attached as **Exhibit A**.

15. The Loan Agreement specifies various conditions that trigger a default of the Loan. Those conditions included the following events: (1) if Amazon Capital Services did “not receive any payments under this Loan Agreement when due”; and (2) if Better Linen’s “ordered product sales on Amazon.com as reported in [Better Linen’s] Seller Account (‘OPS’) in any 30 day period are less than 50% of [Better Linen’s] lowest OPS on Amazon.com in any of the 12 months prior to the date of this Loan Agreement.” Ex. A ¶ 5.1. In the event of a default, the Loan Agreement provided Amazon Capital Services with several remedies, “including but not limited to . . . declar[ing] the unpaid balance of [Better Linen’s] Loan to be immediately due and payable.” *Id.* ¶ 5.2. If Amazon Capital Services refers the case to an attorney for collection, Mr. Lebowitz further agreed “to pay all of [Amazon Capital Service’s] costs associated with such collection or enforcement action to the fullest extent not prohibited by applicable law, including without limitation our reasonable attorneys’ fees.” *Id.*

16. In order to receive the Loan, Amazon Capital Services required Mr. Lebowitz to execute the separate Personal Guaranty, which he did on July 26, 2018. A true and correct copy of the Personal Guaranty signed by Mr. Lebowitz is attached as **Exhibit B**.

17. In the Personal Guaranty, Mr. Lebowitz “unconditionally and irrevocably” guaranteed Better Linen’s obligations under the Loan Agreement, “together with all expenses [Amazon Capital Services] incur[s] relating to collection” if Better Linen defaulted on those obligations, “including reasonable attorneys’ fees.” Ex. B at 1. Mr. Lebowitz also agreed in the Personal Guaranty that Amazon Capital Services may proceed with an action directly against him personally “without first exhausting [] remedies against” Better Linen.” *Id.*

18. After the execution of the Loan Agreement and the Personal Guaranty, Amazon Capital Services funded the Loan in its entirety on July 31, 2018.

19. Better Linen and Mr. Lebowitz made payments under Paragraphs 1, 3, and 5.1 of the Loan Agreement for approximately six months. In March 2019, however, Better Linen and Mr. Lebowitz ceased making payments as required. As a result, Better Linen and Mr. Lebowitz defaulted on the Loan pursuant to Paragraph 5.1 of the Loan Agreement in March 2019. In addition, in February 2019, Better Linen's ordered product sales were less than 50% of its lowest ordered product sales in any of the 12 months prior to the date of the Loan Agreement, which constituted a separate trigger of default pursuant to Paragraph 5.1 of the Loan Agreement.

20. Amazon Capital Services contacted Better Linen and Mr. Lebowitz multiple times in February, March, and April 2019. Mr. Lebowitz refused to make payments on behalf of Better Linen to fulfill its obligations under the Loan Agreement, as he contractually promised to do pursuant to the unambiguous terms of the Personal Guaranty.

21. Amazon Capital Services declared the loan to be in default and the outstanding balance due on April 11, 2019. The outstanding balance on the loan is currently \$161,235.95. The Loan Agreement provides for continuing interest while the loan remains unpaid.

FIRST CAUSE OF ACTION
Breach of Contract

22. Amazon Capital Services repeats and realleges each and every allegation above as if fully set forth herein.

23. Amazon Capital Services and Mr. Lebowitz entered into the Personal Guaranty, pursuant to which Mr. Lebowitz personally guaranteed Better Linen's contractual obligations set forth in the Loan Agreement.

24. Amazon Capital Services has performed all of the covenants and conditions required to be performed by it pursuant to the Loan Agreement and the Personal Guaranty, except those waived, prevented, excused or rendered unnecessary by virtue of Better Linen's and Mr. Lebowitz's breaches.

25. Better Linen breached the Loan Agreement by failing to make the required payments and because in February 2019, Better Linen's ordered product sales were less than 50% of its lowest ordered product sales in any of the 12 months prior to the date of the Loan Agreement.

26. Mr. Lebowitz breached the Personal Guaranty by failing to fulfill Better Linen's contractual obligations under the Loan Agreement, including, but not limited to, making the payments due to Amazon Capital Services pursuant to the Loan Agreement.

27. As a direct and proximate results of Mr. Lebowitz's breach, Amazon Capital Services suffered damages in the amount of the outstanding balance of the Loan, plus interest. In addition, Mr. Lebowitz is obligated to pay Amazon Capital Service's reasonable attorneys' fees and the cost of these proceedings pursuant to both the Loan Agreement and the Personal Guaranty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Amazon Capital Services respectfully requests judgment against Defendant Mr. Lebowitz as follows:

A. for compensatory damages equal to the outstanding balance of the loan, plus interest, in an amount to be proven at trial (but in any event, no less than \$161,235.95.)

B. for the reasonable attorneys' fees and all costs associated with this lawsuit, as mandated by the Loan Agreement and the Personal Guaranty;

C. for pre-judgment and post-judgment interest, to the fullest extent available, on the foregoing; and

D. for such other further and different relief as this Court deems just and proper.

Dated: New York, New York
October 6, 2020

DAVIS WRIGHT TREMAINE LLP

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